

because the supplies or services ordered are unique or highly specialized.

(iii) The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.

(iv) It is necessary to place an order to satisfy a minimum guarantee.

(3) *Pricing orders.* If the contract did not establish the price for the supply or service, the contracting officer must establish prices for each order using the policies and methods in subpart 15.4.

(4) *Decision documentation for orders.* The contracting officer shall document in the contract file the rationale for placement and price of each order, including the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. This documentation need not quantify the tradeoffs that led to the decision. The contract file shall also identify the basis for using an exception to the fair opportunity process. If the agency uses the logical follow-on exception, the rationale shall describe why the relationship between the initial order and the follow-on is logical (*e.g.*, in terms of scope, period of performance, or value).

(5) *Task-order and delivery-order ombudsman.* The head of the agency shall designate a task-order and delivery-order ombudsman. The ombudsman must review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman must be a senior agency official who is independent of the contracting officer and may be the agency's competition advocate.

(c) *Limitation on ordering period for task-order contracts for advisory and assistance services.* (1) Except as provided for in paragraphs (c)(2) and (c)(3), the ordering period of a task-order contract for advisory and assistance services, including all options or modifications, normally may not exceed 5 years.

(2) The 5-year limitation does not apply when—

(i) A longer ordering period is specifically authorized by a statute; or

(ii) The contract is for an acquisition of supplies or services that includes the acquisition of advisory and assistance services and the contracting officer, or other official designated by the head of the agency, determines that the advisory and assistance services are incidental and not a significant component of the contract.

(3) The contracting officer may extend the contract on a sole-source basis only once for a period not to exceed 6 months if the contracting officer, or other official designated by the head of the agency, determines that—

(i) The award of a follow-on contract is delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(ii) The extension is necessary to ensure continuity of services, pending the award of the follow-on contract.

[65 FR 24319, Apr. 25, 2000, as amended at 67 FR 56119, Aug. 30, 2002; 68 FR 60005, Oct. 20, 2003; 70 FR 11738, Mar. 9, 2005]]

#### **16.506 Solicitation provisions and contract clauses.**

(a) Insert the clause at 52.216-18, Ordering, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(b) Insert a clause substantially the same as the clause at 52.216-19, Order Limitations, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(c) Insert the clause at 52.216-20, Definite Quantity, in solicitations and contracts when a definite-quantity contract is contemplated.

(d)(1) Insert the clause at 52.216-21, Requirements, in solicitations and contracts when a requirements contract is contemplated.

(2) If the contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, use the clause with its *Alternate I*.

(3) If the contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis, use the clause with its *Alternate II* (but see paragraph (d)(5) of this section).

(4) If the contract involves a partial small business set-aside, use the clause with its *Alternate III* (but see subparagraph (5) below).

(5) If the contract—

(i) Includes subsistence for Government use and resale in the same schedule and similar products may be acquired on a brand-name basis; and

(ii) Involves a partial small business set-aside, use the clause with its *Alternate IV*.

(e) Insert the clause at 52.216-22, Indefinite Quantity, in solicitations and contracts when an indefinite-quantity contract is contemplated.

(f) Insert the provision at 52.216-27, Single or Multiple Awards, in solicitations for indefinite-quantity contracts that may result in multiple contract awards. Modify the provision to specify the estimated number of awards. Do not use this provision for advisory and assistance services contracts that exceed 3 years and \$10 million (including all options).

(g) Insert the provision at 52.216-28, Multiple Awards for Advisory and Assistance Services, in solicitations for task-order contracts for advisory and assistance services that exceed 3 years and \$10 million (including all options), unless a determination has been made under 16.504(c)(2)(i)(A). Modify the provision to specify the estimated number of awards.

[48 FR 42219, Sept. 19, 1983; 60 FR 48260, Sept. 18, 1995. Redesignated and amended at 60 FR 49726, 49727, Sept. 26, 1995; 65 FR 24320, Apr. 25, 2000]

## Subpart 16.6—Time-and-Materials, Labor-Hour, and Letter Contracts

### 16.601 Time-and-materials contracts.

(a) *Description.* A time-and-materials contract provides for acquiring supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit and (2) materials at cost, in-

cluding, if appropriate, material handling costs as part of material costs.

(b) *Application.* A time-and-materials contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

(1) *Government surveillance.* A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.

(2) *Material handling costs.* When included as part of material costs, material handling costs shall include only costs clearly excluded from the labor-hour rate. Material handling costs may include all appropriate indirect costs allocated to direct materials in accordance with the contractor's usual accounting procedures consistent with part 31.

(3) *Optional method of pricing material.* When the nature of the work to be performed requires the contractor to furnish material that it regularly sells to the general public in the normal course of its business, the contract may provide for charging material on a basis other than at cost if—

(i) The total estimated contract price does not exceed \$25,000 or the estimated price of material so charged does not exceed 20 percent of the estimated contract price;

(ii) The material to be so charged is identified in the contract;

(iii) No element of profit on material so charged is included as profit in the fixed hourly labor rates; and

(iv) The contract provides (A) that the price to be paid for such material shall be based on an established catalog or list price in effect when material is furnished, less all applicable discounts to the Government, and (B) that in no event shall the price exceed the contractor's sales price to its most-favored customer for the same item in like quantity, or the current market price, whichever is lower.

(c) *Limitations.* A time-and-materials contract may be used (1) only after the